IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 560 of 2006()

CRA.319/2002 of I ADDL. SESSIONS COURT, KOLLAM
CC.353/1998 OF JUDL.MAGISTRATE OF FIRST CLASS-I, PUNALUR

REVN. PETITIONER: ACCUSED.

M.SLAAHUDEEN, KAMPILINIL VEEDU,
URUKUNNU, THENMALA.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL

RESPONDENTS:RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
DIRECTOR OF PUBLIC PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

2. VARGHESE THOMAS, KOLLIRETHU VEEDU,
E.S.N.COLONY, KULATHUPPUZHA.

R1 BY PUBLIC PROSECUTOR SRI.KAMMAPPU
R2 BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

CRL.R.P.NO. 560 OF 2006

Dated this the 27th day of November,2006

O R D E R

The petitioner was tried in C.C.No.353 of 1998, on the file of the Court of the Judicial Magistrate of the First Class, Punalur for the offence under Section 138 of the Negotiable Instruments Act. The trial court found him guilty. The petitioner/accused was sentenced to undergo simple imprisonment for three months and was directed to pay a sum of Rs.70,000/- as compensation under Section 357(3) of the Code of Criminal Procedure. The petitioner/accused challenged the conviction and sentence in appeal. The Appellate Court confirmed the conviction. However, the sentence was modified and reduced to simple imprisonment for a period of one month. The direction to pay compensation was also confirmed.

2. The case of the complainant is that the

accused purchased a jeep which belonged to the complainant. In that transaction, an amount of Rs.70,000/- was due to the complainant. The accused issued Ext.P1 cheque dated 11.4.1998, in discharge of that liability. The cheque was dishonoured on its presentation. Ext.P4 notice was issued to the accused. There was no reply to the notice.

3. Before the trial court, the complainant was examined as PW1 and Exts.P1 to P7 were marked. There was no defence evidence on the side of the accused. There is no case that the complaint was not filed within time. It is also not in dispute that the ingredients of the proviso to Section 138 have been complied with. The signature in Ext.P1 cheque is not disputed. The contention raised by the accused is that the cheque was given by him to one Mathayi. The trial court held that the evidence of PW1 in cross examination is not

sufficient to rebut the presumption under Section 139 of the Negotiable Instruments Act. The accused has not adduced any evidence to rebut the presumption. In the examination of the accused under Section 313 of the Code of Criminal Procedure, the accused stated that he had already repaid the amount by making payment to one Mathayi and Suresh. The trial court did not rely on the statement given by the accused since there was no supporting evidence. The trial court took note of the fact that if the case of the accused is true, he would have obtained receipt from Mathayi. The trial court came to the conclusion that Ext.P1 cheque was issued in discharge of the liability towards the complainant and that the accused had committed offence under Section 138 of the Act. The Appellate Court considered the evidence and came to the conclusion that the trial court was right in holding that the accused is guilty of the offence. I do not find any irregularity or

illegality in the finding that the accused is guilty of the offence.

4. In so far as the sentence is concerned, since the courts below have awarded compensation of Rs.70,000/-, I do not think that it is necessary to sentence the accused to undergo simple imprisonment for a term of one month. It is sufficient, in my view, to sentence the petitioner/accused to undergo imprisonment till rising of the Court. The courts below have not awarded any default sentence in so far as the compensation is concerned. It is just and necessary in the facts and circumstances of the case, and particularly when the substantive sentence is reduced to imprisonment till rising of the Court, that a default sentence be imposed. Accordingly, there will be a sentence of simple imprisonment for a term of two months in case the petitioner commits default in payment of the compensation.

In the result, the Criminal Revision Petition is disposed of in the following manner:

1) The conviction is confirmed.

2) The sentence of imprisonment is reduced to imprisonment till rising of the Court.

3) The direction to pay compensation of Rs.70,000/- is confirmed. However, in case the petitioner/accused commits default in payment of the compensation amount, he shall undergo simple imprisonment for a period of two months.

4) The petitioner is granted one month's time to pay the compensation amount.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006